

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**E.R., Appellant**

**and**

**DEPARTMENT OF THE TREASURY, OFFICE  
OF THRIFT SUPERVISION, Atlanta, GA,  
Employer**

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**Docket No. 21-0159  
Issued: August 6, 2021**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REVERSING CASE**

Before:

JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 9, 2020 appellant filed a timely appeal from a June 30, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0159.<sup>1</sup>

On July 24, 1992 appellant, then a 49-year-old receptionist, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 1992 she experienced sharp pain in her lower back, left arm, right hand, right foot, and both legs when the elevator that she was on suddenly dropped 5½ to 6 feet while in the performance of duty, and she had to climb out. She stopped work on July 20, 1992. OWCP accepted appellant's claim for lumbar and cervical strains. It subsequently expanded acceptance of her claim to include displacement of cervical intervertebral disc without myelopathy, displacement of lumbar intervertebral disc without myelopathy, and major depression. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective January 10, 1993, and placed her on the periodic rolls, effective June 16, 2002.

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<sup>1</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

A notification of personnel action form (SF-50), dated September 18, 1994, indicated that appellant's retirement plan was under Federal Insurance Contributions Act (FICA) and Federal Employees Retirement System (FERS) with a computation date of January 16, 1990.

On April 11, 2019 OWCP provided SSA with a FERS/SSA dual benefits calculation form. It listed the computation period as July 17, 1992 to the present.

On April 19, 2019 an SSA representative completed the dual benefits calculation form. The SSA representative provided corresponding monthly SSA benefits rates beginning February 2009 with and without appellant's FERS contributions. The form indicated that: beginning February 2009, appellant's SSA rate with FERS was \$1,000.20 and without FERS was \$744.00; beginning December 2011, appellant's SSA rate with FERS was \$1,036.20 and without FERS was \$770.70; beginning December 2012, appellant's SSA rate with FERS was \$1,053.80 and without FERS was \$783.80; beginning December 2013, appellant's SSA rate with FERS was \$1,069.50 and without FERS was \$795.50; beginning December 2014, appellant's SSA rate with FERS was \$1,087.70 and without FERS was \$809.00; beginning December 2016, appellant's SSA rate with FERS was \$1,090.90 and without FERS was \$811.40; beginning December 2017, appellant's SSA rate with FERS was \$1,112.70 and without FERS was \$827.60; and beginning December 2018, appellant's SSA rate with FERS was \$1,143.90 and without FERS was \$850.70.

In a letter dated August 5, 2019, OWCP notified appellant that, based on information provided by SSA regarding the amount of her age-related retirement benefits, which was partially attributable to federal service, her FECA wage-loss compensation had been adjusted. It explained that she was in receipt of SSA age-related retirement benefits every four weeks amounting to \$1,143.90. However, appellant's federal service increased her monthly Social Security payment by \$293.20, which must be offset by the portion of her SSA retirement benefits attributable to her federal service on account of age, resulting in a new net FECA compensation payment of \$1,639.35, every 28 days. Appellant's compensation benefits were adjusted effective July 21, 2019.

OWCP completed a FERS offset calculation worksheet dated August 5, 2019. It calculated the overpayment amount by determining the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$34,226.99. The form indicated that from February 1, 2009 through November 30, 2011, appellant received an overpayment in the amount of \$8,724.88, from December 1, 2011 through November 30, 2012, she received an overpayment in the amount of \$3,203.51, from December 1, 2012 through November 30, 2013, she received an overpayment in the amount of \$3,248.90, from December 1, 2013 through November 30, 2014, she received an overpayment in the amount of \$3,297.03 from December 1, 2014 through November 30, 2016, she received an overpayment in the amount of \$6,716.36, from December 1, 2016 through November 30, 2017, she received an overpayment in the amount of \$3,363.21, from December 1, 2017 through November 30, 2018, she received an overpayment in the amount of \$3,430.60, and from December 1, 2018 through July 20, 2019, she received an overpayment in the amount of \$2,242.50.

In a preliminary determination dated August 5, 2019, OWCP notified appellant that she had received an overpayment of compensation in the amount of \$34,226.99 because it had failed to reduce her wage-loss compensation benefits for the period February 1, 2009 through July 20, 2019 by the portion of her SSA age-related retirement benefits that were attributable to federal service. It found her without fault in the creation of the overpayment and forwarded an

overpayment action request form and overpayment recovery questionnaire (Form OWCP-20). OWCP requested that appellant provide supporting documentation including income tax returns, bank account statements bills and cancelled checks, pay slips, and any other records which supported income and expenses. Additionally, it notified her that within 30 days of the date of the letter she could request a teleconference, a final decision based on the written evidence, or a prerecoumpment hearing.

In a memorandum of telephone call (Form CA-110) dated August 14, 2019, appellant indicated that she did not understand how the overpayment had occurred. She alleged that the money she was receiving from SSA was from her husband's Social Security benefits, and not from her federal work.

Appellant continued to contact OWCP requesting clarification about her overpayment and what information was needed to dispute the overpayment. A Form CA-110 dated August 30, 2019 notes that appellant informed OWCP of her disagreement with the information that SSA had provided. OWCP advised appellant that if the information was incorrect, then SSA needed to provide the corrected information to OWCP in writing. As indicated in a Form CA-110 dated September 5, 2019, appellant contacted OWCP to discuss the specifics regarding what was needed to clear up the overpayment. A September 6, 2019 Form CA-110 documents that appellant informed OWCP that OPM advised her that she has never received any money under FERS and she was waiting for a letter from OPM confirming this information.

On September 10, 2019 OWCP received appellant's request for a prerecoumpment hearing, postmarked September 4, 2019. She indicated that she disagreed with the fact and amount of overpayment. Appellant also requested a waiver because she was found without fault in the creation of the overpayment.

In an October 24, 2019 Form CA-110, appellant informed OWCP's claims examiner that she had two documents showing that she was not on FERS. She was advised to submit a copy of the documents to OWCP.

On January 6, 2020 a telephonic hearing was held. Appellant disputed the fact and amount of overpayment. She noted a discrepancy in the amount she was receiving from SSA.

By decision dated March 2, 2020, OWCP's hearing representative finalized the preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$34,226.99 for the period February 1, 2009 through July 20, 2019. He determined that she was without fault in the creation of the overpayment. OWCP's hearing representative denied waiver of recovery of the overpayment as there was no evidence that recovery would defeat the purpose of FECA. He also found that there was no evidence that recovery would be against equity and good conscience. OWCP's hearing representative required recovery of the overpayment by deducting \$408.75 every 28 days from appellant's continuing compensation payments.

By decision dated June 30, 2020, OWCP's hearing representative set aside the March 2, 2020 decision. He finalized the August 5, 2019 preliminary determination that appellant had received an overpayment of compensation in the amount of \$34,226.99 for the period February 1, 2009 through July 20, 2019. OWCP's hearing representative also denied waiver of recovery of the overpayment as there was no evidence that recovery would defeat the purpose of FECA or that

recovery would be against equity and good conscience. He noted that appellant's husband had testified that they had \$13,200.00 in their checking and savings accounts, which exceeded the resource base of \$10,300.00 to qualify for waiver of an overpayment. OWCP's hearing representative also indicated that appellant had not completed and returned Form OWCP-20 or other financial documentation to support her assets, income, and expenses. He required recovery of the overpayment by deducting \$408.75 from her continuing compensation payments every 28 days.

The Board finds that OWCP has not met its burden of proof to establish that appellant received an overpayment of compensation.

OWCP determined that appellant received an overpayment of compensation during the period February 1, 2009 through July 20, 2019 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. The case record, however, contains CA-110 forms documenting appellant's notification to OWCP that the overpayment was erroneous, that she was not a FERS recipient, and that she had obtained written confirmation that she was not a FERS recipient. It therefore remains unclear whether appellant was covered under a federal annuity program during the period of the overpayment.

As OWCP has not established that appellant received an overpayment of compensation during the period February 1, 2009 through July 20, 2019, the Board finds that OWCP has not met its burden of proof.

**IT IS HEREBY ORDERED THAT** the June 30, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 6, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board